



*Working to protect the Mississippi River
and its watershed in the Twin Cities area.*

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Col. Karl Jansen, District Engineer
St. Paul District, US Army Corps of Engineers
ATTN: Regional Planning and Environmental Division North
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March 18, 2021

Dear Colonel Jansen:

We appreciate the opportunity to comment on the Upper St. Anthony Falls (USAF) Lock and Dam Disposition Study draft report.

Friends of the Mississippi River (FMR) is a non-profit organization with a mission to engage community members and other stakeholders to protect, restore and enhance the Mississippi River and its watershed in the Twin Cities Region. We represent thousands of people in the metropolitan area who care deeply about the river, including a growing membership of over 2,700 people and more than 3,200 volunteers and 2,000 advocates engaged each year.

FMR was founded in 1993 to provide a voice for the river and its National Park: the Mississippi National River and Recreation Area (MNRRA). In 2014, we helped to organize and lead the Stop Carp Coalition's advocacy campaign to close the Upper St. Anthony Falls Lock. Today we work closely with MNRRA and a myriad of other agency and organizational stakeholders to help care for and celebrate the Mississippi River's amazing natural and cultural resources.

The significance of the Mississippi River throughout the study area cannot be overstated. St. Anthony Falls is the centerpiece of the Minneapolis riverfront and the reason for the city's founding. It is also the only natural waterfall on the entire length of the Mississippi River, the sounds and sights of which have attracted visitors for generations. Because these unique resources are so naturally and culturally significant, they played an important role in establishing the National Park designation for the river corridor.

During the past 25 years, the Minneapolis downtown riverfront has undergone an enormous transformation. Decades of neglect and environmental damage inspired the community to convert a blighted area to a National Historic District, a National Park and a vibrant

downtown neighborhood, with well over two billion dollars invested to date. The central riverfront parks and trails draw millions of hikers, bikers, and festivalgoers each year, as well.

In this context, we hoped to see the draft disposition report sufficiently address the significance of the USAF Lock, and the Corps' ongoing ownership and management of it, to the Minneapolis riverfront. Instead, the draft report dismisses the Corps' essential role at St. Anthony Falls and proposes a full disposal that is in direct opposition to stakeholder preference and Congressional direction. The proposal would place the Minneapolis-St. Paul region at enormous risk of harm to its water supply, recreation, and river navigation.

We strongly oppose the Corps' proposal for full deauthorization and disposal of the USAF Lock. This alternative does not meet the report's planning objectives, insufficiently evaluates the risks and constraints, and disregards Congressional direction. We urge the Corps to revise its report to account for these shortcomings, and we urge the Corps to select a modified Alternative 2 (partial deauthorization and disposal) as the Tentatively Selected Plan (TSP).

Our comments are outlined below as follows:

- Comments on specific elements of the draft report
- Report conflicts with Congressional direction in WRDA
- The federal interest in retaining ownership of the USAF lock
- Recommendation: modified Alternative 2

2.4 Planning Objectives

The Corps states that two planning objectives "are the basis for formulation of alternative plans." One of those objectives is to "Support future visions for continued use of USAF Lock and Dam by stakeholders and the public." (p. 22) Based on the stakeholder comments made at the March 3 public meeting and other stakeholder statements of which we are aware, the majority (if not all) of stakeholders object to deauthorization and disposal other than what was directed by the 2020 Water Resources Development Act (WRDA).

Given this, the Corps' report does not meet one of its two planning objectives. This should lead to a substantive revision of its conclusions and recommendations to accurately reflect stakeholder interests.

3.4 Existing Safety Evaluation

We are concerned that the Corps does not consider the impacts of a cutoff wall failure in this section. Regardless of who owns and is responsible for the cutoff wall, the Corps built it and should consider the consequences of its condition and potential failure as an essential part of this study. The Corps should also address the cutoff wall under Section 6.5 (Risk and Uncertainty) for all alternatives.

4.5 Evaluation of Alternatives

We disagree with how the Corps evaluated alternatives against the four evaluation criteria (completeness, effectiveness, efficiency, and acceptability). The ratings should be reassessed as discussed below. We believe that this will lead to a Low rating for Alternative 1a.

Completeness: “The plan must provide and account for all necessary investments needed to ensure the realization of a successful disposition. Environmental risks, needed real estate acquisition preparations, operations and maintenance costs, and potential transferees should be considered. Completeness is also assessed based on the willingness of an entity to take over the facilities, and the ease of conveyance for the government to take the necessary steps to transfer the facilities.” (p. 43)

For Alternative 1a, this measure’s rating should drop from High to Low. WRDA 2020 makes it significantly less likely that a willing entity will step forward to take over the lock facilities that are not conveyed to the City of Minneapolis or its designee. WRDA 2020 grants the City or its designee the reserved rights of entry, use of, and construction on any property they don’t take, reducing the appeal for another party to take over these remaining facilities.

These reserved rights would also likely require an increased level of funding from Congress to attract a new owner, making the “ease of conveyance” more difficult. Leaders of Minnesota’s Congressional delegation have stated their objections to Alternative 1a; we do not anticipate that they would authorize conveyance nor provide the needed funding to a new owner. These realities should be accounted for.

Effectiveness: “The extent to which the measure achieves the planning objectives and avoids planning constraints.” (p. 43)

Based on the stakeholder comments made at the March 3 public meeting and other stakeholder statements of which we are aware, the majority (if not all) of stakeholders object to deauthorization and disposal other than what was directed by WRDA 2020. Therefore, Alternative 1a does not meet the Effectiveness Measure as it does not satisfy one of the planning objectives.

The ratings and comments in Table 4-6 should be revised to reflect this lack of effectiveness in meeting the planning objectives. Comments that disposal (beyond what is directed in WRDA 2020) is compatible with future visions for the site should be removed. Alternative 1a needs to be reduced from High to Low for this Measure.

Efficiency: “The extent to which the measure is cost effective. Efficient plans would require the least cost to ensure the realization of a successful disposal.” (p. 43).

As stated under the Completeness Measure, WRDA 2020 made it far less likely a willing entity will come forward to take ownership of a property over which they have so little control. Even if an entity were to step forward, the incentive payment would likely need to be very large. Under Alternative 1a, the rating for this Measure needs to be reduced from Moderate to Low as the current rating does not account for this large incentive payment.

Acceptability: “Evaluation of whether the measure is acceptable to stakeholders, including the state and federal resource agencies, local governments, non-profit organizations, and the public, and the extent to which each measure could be implemented concordantly with any of the known future visions for the area.” (p. 43)

As stated above, stakeholders clearly, and almost unanimously, oppose deauthorization and disposal. The rating for Alternative 1a should be changes from High to Low. Also, the report should not state that “This alternative better accounts for future use at the site.” This alternative is in clear conflict with planned uses at the site.

Given the above analysis, the Corps needs to reconsider its ratings for all the action alternatives. In particular, Alternative 1a should have an overall Low rating and, therefore, is not an acceptable alternative. The statements under the TSP with regard to the Measures are incorrect.

5. Environmental Consequences of the Alternatives

This section of the report incorrectly conflates “unknown effects” with “no effects.” The report states: “While it can be argued that each action alternative is a step towards realizing a different future vision for USAF, identifying the environmental effects of this would be largely speculative.” (p. 66) This statement is a recognition that there will be effects. Yet the Corps then asserts there will be “no effects” from any of the proposed action alternatives. How can the Corps, while stating that there will be effects but not knowing what those effects could be, come to a determination of “no effect”?

The report states that nothing about the current “conditions described for each resource would not change under any of the alternatives,” and “the proposed action would not result in any physical changes to the environment.” (p. 66, 96) This is incorrect.

If Congress deauthorizes the navigation and recreation missions and transfers Corps property to a non-federal entity, this will lead to changes to the “physical, ...biological, cultural, and sociological characteristics of the project study area.” (p. 66) The Corps is incorrect in stating that there will no effects.

The new conditions could be substantially different; a new owner may use the lock in new ways. Without federal ownership, many of the federal laws, regulations, and Executive Orders that currently impact the Lock will no longer apply, substantially weakening future environmental reviews. By selecting Alternative 1a, the Corps hopes to achieve a specific outcome, and no further review of alternative outcomes will be possible. That means that the Corps should not avoid a full environmental review now.

The Corps has done a thorough job of defining the current conditions or the No Action conditions, but it has not examined the clearly foreseeable conditions from deauthorization and disposal. We know that with deauthorization and disposal:

- Much of the federal review authority will go away, which will lead to actions that will not need to meet rigorous federal laws, regulations, and policies for review and approval.
- The new owner(s) will not use the Lock and related property for navigation and will not need to use it for flood mitigation.
- Recreation use will be deauthorized, and, as is stated several times in the report, recreational use will increase.
- New recreational amenities will be added to the site.
- New uses of the existing buildings will increase recreation or other activities.

We support the Corps' completion of a Section 106 review under the National Historic Preservation Act and negotiation of a Programmatic Memorandum of Agreement (PA) to address potential future uses. In this, the Corps is acknowledging that it must address "speculative" outcomes, as that is what a PA does. At a minimum, the same level of anticipation or speculation could be applied to the National Environmental Policy Act (NEPA) review.

On p. 66, the Corps speaks directly to "implementing" one of the alternatives. This is no different than implementing the preferred alternative for a levee alignment. Each alternative and its potential effects must be thoroughly vetted against the others. But for this EA, the Corps claims that because it does not know the effects that could come from implementing the action alternatives, it does need to consider the effects and may do so later. This, again, violates the idea of adequately weighing the impacts of different alternatives before the preferred alternative is selected and is inherently predecisional.

6. Tentatively Selected Plan

Implementability

"Complete deauthorization and disposal with an incentive is considered the most implementable alternative, provided that an entity fitting the qualifications and public uses intended by Congress, provides a statement during or shortly after the public review period." (p. 88)

We disagree. Given our earlier comments, Alternative 1a is not the “most implementable alternative” for the following reasons:

- The Corps has not adequately assessed the impacts of each alternative under NEPA, so it can’t conclude which action alternative is the most implementable.
- WRDA 2020 changed crucial elements of future site use and control, which the Corps did not factor into its assessment.
- Key members of the Minnesota Congressional delegation are adamantly opposed to deauthorization and disposal (beyond what will be transferred to the City or its designee per WRDA 2020) and have clearly stated Congress’ intent to the Corps.

Without addressing these issues, the Corps cannot state that Alternative 1a is the most implementable. In fact, given known Congressional opposition it may be impossible.

Recreation

Under its review of Recreation on p. 87, the Corps states: “Under all alternatives, recreational use is anticipated to increase in association with the City of Minneapolis’ plan to create a ‘...comprehensive recreational, touristic, and interpretive experience” at the site.’ However, there is no basis to conclude the effects would be different across alternatives.”

This is not accurate. Deauthorization and disposal could adversely affect those recreation plans if the property goes to an entity not willing to work with the City and its partners or properly maintain the property it owns. Since the Corps does not know the identity of a prospective entity that has not yet come forward to take the remaining property it cannot know whether that entity would intend to use the property in a manner that is consistent and compatible with future recreational uses.

Mitigation for Adverse Environmental Effects

Corps determines that “No adverse environmental effects are anticipated for the TSP. Therefore, no mitigation is identified.” (p. 89) However, the Corps hasn’t assessed the potential effects and cannot, therefore, know what mitigation is needed or not.

Again, the Corps cannot put off such an analysis because they claim it is speculative. Many of the impacts of deauthorization are not speculative, nor are the most likely consequences of disposal under Alternative 1a or the other action alternatives. Proposing a specific alternative fixes it in place and impacts must be assessed and addressed before that happens. Waiting until after the TSP is approved and deauthorization happens will severely limit mitigation options.

7. Compliance with Environmental Statutes

Under many of the acts mentioned in Section 7, the Corps asserts there will be no impacts but offers no analysis to support this assertion. There are two problems with this approach. First,

as we have demonstrated elsewhere, the Corps has not evaluated the potential impacts of the action alternatives, claiming to do so would be speculative. Second, even if no impacts would occur, the Corps still needs to explain how they came to this conclusion.

Appendix H. Draft Finding of No Significant Impact (FONSI)

In the Draft FONSI, the Corps asserts that: “Pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, the U.S. Army Corps of Engineers determined that the recommended plan would have no potential to cause effects on historic properties.” (p. 5)

This statement is unfounded and is another example of the Corps conflating “unknown effects” with “no effects.” The Corps has not initiated the Section 106 process, nor are we aware of any other evaluation of potential effects on historic properties. How can the Corps be sure of “no potential to cause effects” without an evaluation?

We are also not aware of formal consultation with MNRRA, Native American groups, or other important stakeholders. “Preliminary, informal discussions” (as cited on p. 94) do not count as compliance with Section 106.

The Draft FONSI must be corrected to reflect that impacts to historic properties have not yet been assessed. Until this assessment is complete, it is premature to declare “no significant impacts” and premature to determine a TSP.

Report Conflicts with Congressional Direction

WRDA 2018

Section 1225 of WRDA 2018 requires that the Corps include “plans for carrying out modifications to the Upper St. Anthony Falls Lock and Dam to (A) preserve and enhance recreational opportunities and the health of the ecosystem; and (B) maintain the benefits to the natural ecosystem and human environment.” (p. 4-5)

The Corps, however, has declared its intentions not to comply with this directive because, “it was not the objective of the study for the Corps to develop measures to enhance or improve recreation opportunities, the human environment and the natural environment, however, the TSP is conducive to the new owner and outside stakeholders developing the site to accomplish these objectives.” (p. v)

Despite being told they “shall” do so, the Corps has ignored this directive. Instead, it continually states that some other entity and unnamed stakeholders can pursue such plans after the Corps transfers the property to the new entity or entities. The Corps is speculating here by presuming they will find a new owner and assuming that new owner will have recreation, the human environment, or the natural environment as priorities. So, the Corps insists it cannot examine the environmental impacts of potential new uses saying to do so

would be speculative, but then it attempts to avoid a Congressional directive by speculating what might happen after deauthorization and disposal.

In choosing not to comply with WRDA 2018, the Corps missed an opportunity to provide the public and Congress with a preferred alternative that most stakeholders want.

WRDA 2020

As discussed above, the draft report does not adequately account for the Congressional directives in WRDA 2020, particularly how the City's ownership of some Lock property will affect outcomes for the remaining property.

Section 356 of WRDA 2020 also clearly states, "Ownership rights to the Upper St. Anthony Falls Lock and Dam shall not be conveyed under this subsection, and the Secretary shall retain all rights to operate and maintain the Upper St. Anthony Falls Lock and Dam."

On March 1, six leaders of Minnesota's Congressional delegation reiterated their intent in a letter to Acting Secretary Whitley: "We are frustrated that the St. Paul District has taken this [full disposal] position not only because full disposition is inconsistent with the expedited conveyance in Section 356, but also because it has been advised of Congressional intent in this matter previously.

"A January 8, 2019, letter to the Corps from Senators Klobuchar and Smith stated the expectation that, 'the Corps would cooperate with the City of Minneapolis to develop a plan in which the Corps would continue to own, operate and maintain the Upper Lock for flood control and water supply management and divest to the City a portion of the real property surrounding the Upper Lock.' Our commitment to this goal is unchanged."

The Corps believes that Congress will authorize deauthorization and disposal, and will appropriate an incentive payment for a yet-unidentified new owner. Congress has been clear that it has no intention to do so. As stated above, this has clear implications for the report's assessment of alternatives and should be addressed in the final report.

The Federal Interest: Recreation, Water Supply and Navigation

We want to address the distinction between a federal interest in the future of the USAF Lock and Dam, and the federal interest in its current navigation mission. At the March 3 public meeting, the Corps said that for there to be a federal interest, there has to be a currently authorized federal mission. This is not the case. The federal interest, as demonstrated by the Corps' detailed economic analysis for the National Economic Development (NED) plan, is based on whether there are national economic benefits from the project, as yet authorized or not. We believe there are such benefits, both from what is currently authorized and from what should be.

Further, Section 216 of the Flood Control Act of 1970 allows the Corps to review existing projects “*when found advisable due [to] significantly changed physical or economic conditions, and to report thereon to Congress with recommendations on the advisability of modifying the structures or their operation, and for improving the quality of the environment in the overall public interest.*” (p. 2)

The changed physical and economic conditions for the USAF Lock & Dam have led to the current study, but the law does not limit the analysis to the currently authorized primary purpose. The Corps can consider whether, due to the changed conditions, there are other reasons for reporting to Congress “*with recommendations on the advisability of modifying the structures or their operation, and for improving the quality of the environment in the overall public interest.*” We strongly support modifying the structures and operations to support new, nationally significant uses. We also believe that there is still a navigation interest for the Corps to stay at St. Anthony Falls.

By staying at the USAF Lock in partnership with the key stakeholders and by modifying the structures and their operations at the site, the Corps can help improve “the quality of the environment in the overall public interest.” The public interest is readily apparent in the disposition report, based on the economic investments in the downtown riverfront - public and private - and in the series of planning studies that call for substantial investment in riverfront parks and amenities, as evidenced by the opening of Water Works Phase I later this year.

We believe the Corps should advise Congress that there still is a federal interest in staying at the lock given the nationally significant needs and opportunities being proposed by Friends of the Falls and due to the water supply needs of the largest metropolitan area in the region and largest on the Mississippi River. These needs and opportunities - including benefits to NED - greatly exceed the site’s value gained from navigation.

Recreation and Cost-Sharing

At the March 3 public meeting, the Corps stated that everyone wanted them to continue owning the Lock, but no one was willing to share in the costs. This is not true. Friends of the Falls has secured a \$2.8 from the State of Minnesota and is willing to match that with \$2.5 million of private funding, totaling \$5.3 million. In addition, the National Park Service (NPS) is already sharing some costs and has taken over visitor management responsibilities and through NPS funding sources could bring more federal funding to the site. Mississippi Park Connection has also helped fund key improvements and interpretation at the site and will be an important funding partner going forward.

With a robust and nationally significant visitor facility at the Lock, millions more in funding will become available. While not covering all the Corps’ maintenance costs, these

partnerships will certainly reduce those costs. For these reasons, the Corps needs to substantially reconsider its economic calculations for staying at the Lock.

Water Supply

Federal appropriations and Corps work saved St. Anthony Falls. The Corps built the cutoff wall under the river and the two roll dams and plugged the cavities in the sandstone caused by the Eastman Tunnel collapse. Because of the cutoff wall, Minneapolis and St. Paul Water Works can supply over one million Twin Cities residents with water, as well as the businesses, institutions and health services that rely on them. The Minneapolis-St. Paul International Airport also depends on this water supply to serve the 40 million passengers who travel through the airport each year. A loss of water to the airport would reverberate nationally and internationally; a massive number of flights would have to be diverted to other airports. A serious examination of all the national and international connections that would be disrupted by a failure of the cutoff wall or the surface damming structures at St. Anthony Falls must be a part of the Corps NED analysis.

The Corps did not mention the St. Paul water supply in their consideration of dam removal and overall consequences of a dam failure at St. Anthony Falls. As the report states, the river would cut down the channel for 30 miles upstream. The St. Paul water intake is only about nine miles upstream and would therefore be in jeopardy. The Corps needs to examine this concern before finalizing their study.

Downstream Navigation Functions

A dam failure, the study says, “would have profound impacts on water turbidity and sediment load that would continue for many decades. The sediment influx would end up in dredge shoals in Pool 2 and would likely result in increased dredging.” (p. 18) Since the USAF Lock, two Corps dam sections and the cutoff wall preserve the dam and reservoir at St. Anthony Falls, it is in the interest of downstream navigation to make sure these structures do not fail. If they did, the Corps and the federal government would have to spend millions more in dredging for decades. The only way for the Corps to ensure that the USAF Lock is properly maintained to support downstream navigation is to retain ownership.

Recommendation: Modified Alternative 2

In light of all of these comments, we believe that the Corps must stay at St. Anthony Falls and embrace a modified Alternative 2. Under the modified alternative, the Corps would keep all the remaining property the City or its designee does not take. The Corps would not seek deauthorization of its navigation mission but would recommend adding water supply as second primary mission and bolstering its recreation mission.

A modified Alternative 2 would meet both planning objectives, and when put through the assessment of planning measures, it would lead to defensible ratings. The NED analysis,

when it takes into account the water supply mission and the remaining navigation function, would demonstrate a substantial positive benefit cost ratio and critical federal interests.

The Corps has been interpreting its first study objective, “reduce the federal investment for ownership and operations, maintenance, repair, rehabilitation, and replacement of USAF Lock and Dam over the next 50 years” to mean that it must eliminate all costs. Alternative 2 would not do that. It would, however, lead to substantial federal cost reduction by having multiple partners who will bring substantial funding to the site. The Corps would also have access to new funding sources, especially if Congress authorizes water supply as another primary mission and the Corps increases its recreational presence.

Add to this the value of the water supply mission. Preserving the dams at St. Anthony Falls would rank as one of St. Paul District’s most important projects. What other Corps project serves the needs of well over one million people, an international airport through which over 40 million people pass each year, and the multiple businesses and institutions of the major regional hub with national and international connections? The Corps worries about \$7 million in maintenance costs over the next 50 years. The long-term and multiple cost benefits of Corps built and owned structures at St. Anthony Falls dwarf this amount, and the return on investment is significantly greater than some other Corps projects.

In conclusion, **we urge the Corps to revise the draft disposition study to address these comments and to recommend a modified Alternative 2 as the Tentatively Selected Plan.**

We also urge the Corps to continue maintenance of the Lock throughout this period. At the March 3 public meeting, we learned that some elements are already deteriorating. Given the Lock’s prominent location downtown Minneapolis and at one of the most visited sites on the whole Mississippi River, how can the Corps allow the Lock to deteriorate? In addition, allowing a site eligible for the National Register to deteriorate is considered neglect and is an adverse under Section 106 of the National Historic Preservation Act.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Whitney L. Clark". The signature is written in a cursive, flowing style.

Whitney L. Clark
Executive Director